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Communicable Disease Tests.

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Official Title and Summary Prepared by the Attorney General

COMMUNICABLE DISEASE TESTS. INITIATIVE STATUTE. Requires courts in criminal and juvenile cases, upon finding of probable cause to believe bodily fluids were possibly transferred, to order persons charged with certain sex offenses, or certain assaults on peace officers, firefighters, or emergency medical personnel, to provide specimens of blood for testing for acquired immune deficiency syndrome (AIDS), AIDS-related conditions and other communicable diseases. Provides notification to specified persons of test results. Requires medical personnel in correctional facilities to report inmate exposure to such diseases and notice to personnel who come in contact with such inmates. Provides confidentiality of information reported. Summary of Legislative Analyst's estimate of net state and local government fiscal impact: The costs of judicial proceedings to local governments and laboratory costs to local and state governments could range up to \$1 million annually depending on cost of courtroom hearings, the nature of the tests, and the number of persons subject to them.

Analysis by the Legislative Analyst

Background

Communicable Diseases. State law gives health officials the authority to take certain actions to prevent the spread of communicable diseases such as diphtheria, typhoid, tuberculosis, and various venereal diseases, among others. For example, health authorities may isolate certain individuals infected with a communicable disease, if they feel it is necessary in order to protect the health of others, or they may quarantine individuals who have been exposed to an infectious disease. However, the law currently makes no provision for individuals to be tested for any disease against their will. Further, a person's health status is generally held confidential by health authorities. For example, health authorities who treat a person for venereal disease may contact others who have been sexually involved with that person and advise them to see a physician for examination, but officials will not disclose the identity of the person with the venereal disease.

AIDS. Acquired immune deficiency syndrome (AIDS) is a disease that impairs the body's normal ability to resist serious diseases and infections. The disease is caused by a virus—the human immunodeficiency virus (HIV)—that is spread through intimate sexual contact or exposure to the blood of an infected person. At the time this analysis was prepared (June 1988), there was no readily available method to detect whether a person actually *has* HIV, but a test does exist to detect whether a person has developed antibodies to the virus. The presence of the HIV antibody indicates that the person has been *infected* with the virus. However, a person may have been infected with the HIV and still have negative test results for HIV antibodies, because it usually takes about six weeks, but can take up to six months or longer, for the antibodies to develop in response to the infection. A person infected with the HIV may or may not develop AIDS after a period of years. There is no known cure for AIDS, which is ultimately fatal.

Although health officials have the authority to take the same actions to prevent the spread of AIDS as for other communicable diseases, specific laws govern HIV testing and confidentiality. They specifically prohibit involuntary HIV testing, and require that results of voluntary tests be

kept confidential. A person may not be tested for antibodies to the HIV without his or her written consent, unless the testing is part of a scientific investigation in which blood samples are obtained anonymously. With few exceptions, no one may disclose the results of an HIV antibody test except for physicians who have been authorized in writing by the person tested. Anyone who makes an unauthorized disclosure may be subject to civil or criminal penalties. In addition, no one can be compelled to identify an individual who has been tested for HIV antibodies in any criminal or other governmental proceeding.

These provisions also apply to inmates housed in state prisons, county jails, and juvenile detention facilities who may be infected with the HIV or any communicable disease.

Proposal

This measure allows courts to require that certain individuals be tested for HIV infection and other communicable diseases without their consent, and permits limited disclosure of the test results, in two situations:

1. Victims of certain sex crimes may obtain a court order requiring the person charged with the crime to be tested for the HIV antibodies and other communicable diseases, if the court determines that there is reason to believe that bodily fluids may have been exchanged during the alleged crime.

2. Peace officers (including city police officers, deputy sheriffs, members of the California Highway Patrol, correctional officers, and certain other types of law enforcement officers), firefighters, or emergency medical workers who have been bitten, scratched, spit upon, or otherwise involved in a potential exchange of blood or other bodily fluids by someone interfering with their duties may obtain a court order requiring the individual to be tested for HIV antibodies and other communicable diseases, if the individual has been charged in a criminal complaint, and if the court determines that the reason to believe that a transfer of bodily fluids may occurred.

Under the measure, the court determines which communicable disease tests, in addition to the HIV antibody

test, should be administered.

Copies of the test results are to be given to the person requesting the court order, to the person tested, and, if the person tested is in prison, in jail, or in a juvenile detention facility, to the officer in charge of his or her detention or incarceration.

The measure also provides that if medical personnel in prisons, jails, and juvenile detention facilities learn that an inmate of the facility has been exposed to the HIV or other communicable diseases, they must inform the officer in charge of the facility. The officer in charge must then inform all staff and volunteers who may come in contact with that inmate that the inmate has been exposed.

Anyone who deliberately discloses the identity and health status of the person who was tested for HIV antibodies or other communicable diseases, beyond the disclosures required by this measure, is guilty of a misdemeanor, punishable by imprisonment in county jail for up to six months, or by a fine of up to \$1,000, or by both imprisonment and a fine.

Fiscal Effect

The measure would result in (1) costs to local governments for court proceedings to determine whether a person should be tested for HIV infection, or for other communicable diseases, and (2) laboratory and administrative costs to local governments and the state to conduct the blood tests, and to notify the person requesting the test and the person tested of the results.

The total cost of the initiative would depend on the number of peace officers, firefighters, emergency medical personnel, and victims of sex crimes who request court-ordered testing, the length of the courtroom hearings, and the number and type of laboratory tests ordered by the courts. Based on available data on the number of sex crimes committed each year, the number of assaults against peace officers, firefighters and emergency medical personnel, the costs of courtroom hearings, and laboratory costs for blood tests, it is estimated that the combined state and local costs of this measure could range up to \$1 million annually.

Text of Proposed Law

This initiative measure is submitted to the people in accordance with the provisions of Article II, Section 8 of the Constitution.

This initiative measure adds sections to the Health and Safety Code; therefore, the new provisions proposed to be added are printed in *italic type* to indicate that they are new.

PROPOSED LAW

SECTION 1. Adoption of Chapter.

A new Chapter 1.20 commencing with section 199.95 entitled "AIDS Public Safety and Testing Disclosure" and new sections 199.95, 199.96, 199.97, and 199.98 are added to Part 1 of Division 1 of the Health and Safety Code to read as follows:

199.95. Purpose. *The people of the State of California find and declare that AIDS, AIDS-related conditions, and other communicable diseases pose a major threat to the public health and safety.*

The health and safety of the public, victims of sexual crimes, and peace officers, firefighters, and custodial personnel who may come into contact with infected persons, have not been adequately protected by law. The purpose of this chapter is to require that information that may be vital to the health and safety of the public, victims of certain crimes, certain defendants and minors, and custodial personnel, custodial medical personnel, peace officers, firefighters and emergency medical personnel put at risk in the course of their official duties, be obtained and disclosed in an appropriate manner in order that precautions can be taken to preserve their health and the health of others or that such persons can be relieved from groundless fear of infection.

It is the intent of this chapter to supersede in case of conflict existing statutes or case law on the subjects covered including but not limited to the confidentiality and consent provisions contained in chapters 1.11, 1.12, and 1.13 of Part 1 of Division 1 of the Health and Safety Code.

199.96. Sexual Crimes. *Any defendant charged in any criminal complaint filed with a magistrate or court with any violation of Penal Code Sections 261, 261.5, 262, 266b, 266c, 286, 288, or 288a and any minor with respect to whom a petition has been filed in a juvenile court alleging violation of any of the foregoing laws, shall be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.*

If an alleged victim listed in the complaint or petition makes a written request for testing under this section, the prosecuting attorney, or the alleged victim may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between defendant or minor and the alleged victim in an act specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each requesting victim and, if the defendant or minor is incarcerated or

detained, to the officer in charge and the chief medical officer of the facility in which such person is incarcerated or detained.

199.97. Assaults on Officers. *Any person charged in any criminal complaint filed with a magistrate or court and any minor with respect to whom a petition has been filed in juvenile court, in which it is alleged in whole or in part that the defendant or minor interfered with the official duties of a peace officer, firefighter, or emergency medical personnel by biting, scratching, spitting, or transferring blood or other bodily fluids on, upon, or through the skin or membranes of a peace officer, firefighter, or emergency medical personnel shall in addition to any penalties provided by law be subject to an order of a court having jurisdiction of the complaint or petition requiring testing as provided in this chapter.*

The peace officer, firefighter, emergency medical personnel or the employing agency, officer, or entity may petition the court for an order authorized under this section.

The court shall promptly conduct a hearing upon any such petition. If the court finds that probable cause exists to believe that a possible transfer of blood, saliva, semen, or other bodily fluid took place between the defendant or minor and the peace officer, firefighter, or emergency medical personnel, as specified in this section, the court shall order that the defendant or minor provide two specimens of blood for testing as provided in this chapter.

Copies of the test results shall be sent to the defendant or minor, each peace officer, firefighter, and emergency medical personnel named in the petition and his or her employing agency, officer, or entity, and if the defendant or minor is incarcerated or detained, to the officer in charge and the chief medical officer of the facility in which such person is incarcerated or detained.

199.98. Testing.

(a) *The withdrawal of blood shall be performed in a medically approved manner. Only a physician, registered nurse, licensed vocational nurse, licensed medical technician, or licensed phlebotomist may withdraw blood specimens for the purposes of this chapter.*

(b) *The court shall order that the blood specimens be transmitted to a licensed medical laboratory and that tests be conducted thereon for medically accepted indications of exposure to or infection by acquired immunity deficiency syndrome (AIDS) virus, AIDS-related conditions, and such communicable diseases for which medically approved testing is readily and economically available as determined by the court.*

(c) *Copies of test results which indicate exposure to or infection by AIDS, AIDS-related conditions, or other communicable diseases shall also be transmitted to the State Department of Health Services.*

(d) *The test results shall be sent to the designated recipients with the following disclaimer:*

"The tests were conducted in a medically approved manner but tests cannot determine exposure to or infection by AIDS or other communicable diseases with absolute accuracy. Persons receiving this test result

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Argument in Favor of Proposition 96

Proposition 96 is a victim's rights measure and a public health measure.

Proposition 96 is clearly constitutional and nondiscriminatory, providing for reasonable procedures of confidentiality.

Proposition 96 has been developed to correct a grave injustice that existing law permits to be perpetrated against women and children who are victims of sexual assaults; public safety officers (police, fire, emergency medical) who are victims of physical assaults; and employees and inmates of prisons, jails, and juvenile facilities who may be exposed to possibly fatal disease(s).

Proposition 96 will permit a judge to order a person charged with sexual assault to be tested for sexually transmittable diseases. At the request of the victim(s) of sexual assault, the results of that test will be made known to them. If the victim is a child, the parent or guardian will receive the results.

Proposition 96 will permit a judge to order a person charged with assault upon a public safety officer (police, fire, emergency medical) to be tested for communicable disease(s), if during the assault the officer was exposed to blood or other bodily fluids. The results of the test will be made known to the victim officer, or, if he or she is incapacitated, to the employing agency.

Proposition 96 will permit the medical staff in prisons, jails, and juvenile facilities to notify the person responsible for the care and safety of persons in that facility, whenever it is determined that an inmate is infected with

AIDS or the HIV virus. This will make such notification consistent with the procedures now in place for other communicable diseases. This will allow for appropriate precautions in the housing and transportation of such inmates so as to reduce the risk to both employees and other inmates.

Those who are the victims of violent crime have a right to know if they have been exposed to possibly fatal disease(s). Even if such knowledge may not alter the course of the disease in their own body, it can protect family members or others whom an unwary victim might otherwise expose to the disease.

Our California Legislature has failed to correct this grave injustice. We, the people, must do so with our votes.

Vote yes on Proposition 96. Let the victims of sexual assaults know that we don't want them to be further traumatized by the system.

Vote yes on Proposition 96. Let our public safety officers know that we support them as they go about their hazardous duties of providing for our safety.

Vote yes on Proposition 96. Vote for the protection of victim's rights and public health—perhaps your own or that of your loved ones.

SHERMAN BLOCK
Sheriff, Los Angeles County

MONROE RICHMAN, M.D.
Commissioner, Los Angeles County Commission on AIDS

ED DAVIS
State Senator, 19th District

Rebuttal to Argument in Favor of Proposition 96

Proposition 96 is neither a victim's rights measure nor a public health measure. It is a wasteful, unnecessary measure which responsible public health and law enforcement authorities oppose.

The victims of violent crimes and public safety officers do have a right to know if they have been exposed to a possibly fatal disease. Instead of doing that, Proposition 96 would scare them into thinking they have been exposed when they could not possibly have been exposed. The AIDS virus is transmitted through sexual contact and intravenous needle sharing, not casual contact between citizens and public safety officers.

Violent crime victims and public safety officers who could have been exposed have a right to know if the virus was transmitted to them. Since the AIDS virus isn't transmitted through every sexual contact or every needle stick, people who truly may have been exposed need to be given testing and counseling so they can know if the

virus was transmitted. Proposition 96 doesn't do that. Instead, under the guise of protecting women and children, Proposition 96 would waste millions on useless tests for people accused of crimes.

The Legislature is working now on laws that apply when there truly is a risk of exposure. Those laws, and laws which give crime victims and public safety officers the testing and counseling they need, are what we should have instead of the misguided waste that Proposition 96 calls for.

Proposition 96 is a mistake.

Vote no on Proposition 96.

MICHAEL HENNESSEY
Sheriff, City and County of San Francisco

ROBERT J. MELTON, M.D., M.P.H.
President, Health Officers' Association of California

MARCUS A. CONANT, M.D.
*Chairman, California Department of Health Services,
Task Force on AIDS, 1983-1988*

Argument Against Proposition 96

Proposition 96 is another unnecessary, heavy-handed approach to the AIDS epidemic.

AIDS presents special challenges in the field of law enforcement. The State Legislature has been working with law enforcement and health officials to devise responsible legislation on these issues. Proposition 96 would be counterproductive to these promising efforts.

Don't be fooled. This initiative wouldn't help crime victims or law enforcement officials. Instead, it would spread ignorance about AIDS and would waste millions of critical tax dollars on useless tests.

Proposition 96 would foster the irrational fear that AIDS can be transmitted through certain crimes or through the normal course of law enforcement. California citizens should be giving crime victims, police officers, firefighters and emergency personnel all of the support we can, not instilling fears that they're being exposed to AIDS.

Under Proposition 96, any citizen accused of interfering with a fire, police or emergency medical worker can be tested for the AIDS virus against their will.

Those tests won't help anyone. Medical experts agree that AIDS is spread through sexual contact or intravenous needle-sharing, not through casual contact such as between citizens and medical, fire and police workers.

Public safety workers have the right to expect that if they have been exposed to the AIDS virus, testing and counseling will be provided to them. But Proposition 96 won't do that.

Like law enforcement workers, crime victims deserve

to have testing and counseling made available to them if they are concerned about being exposed. But Proposition 96 won't do that, either.

Proposition 96 says that persons accused of sex-related crimes can be tested without consent. Since the AIDS virus can't be transmitted in many sex crimes, many victims will be needlessly alarmed.

Proposition 96 says that if any medical person working in a jail believes someone has the AIDS virus, the worker must tell the person in charge, who must tell all employees who might have contact with the infected person. This is foolish because casual contact can't possibly transmit the virus. Once the information goes to so many people, medical confidentiality can't be maintained. Inmates or others may mistreat people with the virus. Worse still, workers who could be exposed, like medical workers working with needles, might be less careful with people who have not been named as carrying the virus.

The men and women who risk their lives protecting the public safety—and citizens who have been the victims of crime—should not be frightened into thinking that they have been infected by AIDS when they haven't been.

Vote NO on this ill-advised initiative.

Vote NO on Proposition 96.

MICHAEL HENNESSEY

Sheriff, City and County of San Francisco

ROBERT J. MELTON, M.D., M.P.H.

President, Health Officers' Association of California

MARCUS A. CONANT, M.D.

*Chairman, California Department of Health Services,
Task Force on AIDS, 1983-1988*

Rebuttal to Argument Against Proposition 96

Proposition 96 clearly articulates well-defined procedures designed to offer victims of sexual assaults, public safety officers, and employees and inmates in our adult and juvenile correctional facilities a measure of protection against many potentially fatal diseases.

In those cases wherein such persons may have already been exposed, it will enable them to act in a manner that would minimize exposing their loved ones or others with whom they might come in contact.

Rather than foster an irrational fear of AIDS as the opponents postulate, Proposition 96 will offer to a sexual assault victim or public safety officer the peace of mind of knowing whether or not they have been exposed to any communicable or sexually transmittable disease. Virtually all such diseases are treatable, and they are all covered by Proposition 96.

As is typical in such cases, the opponents misstate the factual content of Proposition 96. It does not mandate AIDS tests for any citizen accused of interfering with

police, fire, or emergency medical workers. It provides for court-ordered testing of persons who are criminally charged.

In no case does Proposition 96 concern itself with casual contacts between persons. There must be exposure to blood, semen, or other bodily fluids as a result of a criminal act.

Vote yes on Proposition 96. Let the women and children who are victims of sexual assaults know that we support them.

Vote yes on Proposition 96. Let our public safety officers know that you care about their well-being.

SHERMAN BLOCK

Sheriff, Los Angeles County

MONROE RICHMAN, M.D.

Commissioner, Los Angeles County Commission on AIDS

ED DAVIS

State Senator, 19th District

assign a specific date and time as approved by the court for appearance by the person contesting the violation and shall then file a complaint and a copy of the notice of delinquent violation with the court pursuant to Section 31027 within 15 days. The processing agency shall notify the person contesting the violation of the date and time for appearance. Thereafter, all proceedings including action of any penalties and fees shall be conducted by the court in the same manner as infraction violations of the Vehicle Code.

(b) Neither the outcome of a processing agency's action pursuant to paragraph (1) of subdivision (a) of this section, nor the court's verdict upon a referral pursuant to paragraph (2) of subdivision (a) of this section, shall be admissible in any subsequent criminal proceeding.

31025. Circumstances Requiring Termination of Proceedings on Notice of Delinquent Violation. The processing agency shall terminate proceedings on the notice of delinquent violation in either of the following cases:

(a) Upon receipt of collected penalties and applicable fees for that notice of delinquent violation. The termination under this subdivision is by satisfaction of the penalty.

(b) Upon a verdict of not guilty from a court of competent jurisdiction.

31026. Deposit of Penalties.

Any penalties which are received by a processing agency or court under this chapter shall be deposited pursuant to chapter 3 of this division.

31027. Filing of Complaint; Notice of Delinquent Violation; Jurisdiction of Court

(a) When a processing agency files a complaint with the court pursuant to Section 31023 or Section 31024, a copy of the notice of delinquent violation issued for service under Section 31020 shall be filed with the court within 15 days and, if prepared in the form approved by the Judicial Council shall be treated as a written notice to appear.

(b) After filing of a complaint or a notice of delinquent violation under this section, the court shall exercise all further jurisdiction over the violation. Any fines or forfeitures collected by the court, after filing of a complaint, shall be collected, deposited, and disbursed pursuant to the provisions of chapter 3 of this division.

CHAPTER 3. DISPOSITION OF FUNDS

31040. Disposition of Funds. Notwithstanding any other provision of law,

Proposition 96: Text of Proposed Law

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should continue to monitor their own health and should consult a physician as appropriate."

person subject to the test is a minor, copies of the test result shall also be the minor's parents or guardian.

(e) The court shall order all persons, other than the test subject, who receive test results pursuant to Sections 199.96 or 199.97, to maintain the confidentiality of personal identifying data relating to the test results except for disclosure which may be necessary to obtain medical or psychological care or advice.

(f) The specimens and the results of tests ordered pursuant to Sections 199.96 and 199.97 shall not be admissible evidence in any criminal or juvenile proceeding.

(g) Any person performing testing, transmitting test results, or disclosing information pursuant to the provisions of this chapter shall be immune from civil liability for any action undertaken in accordance with the provisions of this chapter.

199.99. Custodial Safety.

(a) Any medical personnel employed by, under contract to, or receiving payment from the State of California, any agency thereof, or any county, city, or city and county to provide service at any state prison, the Medical Facility, any Youth Authority institution, any county jail, city jail, hospital jail ward, juvenile hall, juvenile detention facility, or any other facility in which adults are held in custody or minors are detained, or any medical personnel employed, under contract, or receiving payment to provide services to persons in custody or detained at any of the foregoing facilities, who receives information as specified herein that an inmate or minor at such a facility has been exposed to or infected by the AIDS virus or has an AIDS-related condition or any communicable disease, shall communicate such information to the officer in charge of the facility in which such inmate or minor is in custody or detained.

(b) Information subject to disclosure under subsection (a) shall include the

including but not limited to any provision relating to state funding of trial courts by block grant or other means, the total amount of penalties received by a processing agency or court under this division shall be allocated as follows:

(a) An amount equal to ten percent shall be retained in the county treasury or general fund, at the direction of the Board of Supervisors, for the purpose of paying administrative costs incurred by issuing agencies under this division;

(b) An amount equal to eighty percent shall be transferred each month to the California Emergency Housing and Nutrition Fund, pursuant to the provisions of Section 8699.40 of the Government Code;

(c) An amount equal to ten percent shall be transferred each month to the California Housing Fund, pursuant to the provisions of Section 8699.30 of the Government Code.

(d) All processing fees shall be deposited with the county for reimbursement to the processing agency or court.

(e) Pursuant to a finding by the board of directors of the Corporation for California that amounts retained in county treasuries and general funds under subdivision (a) of this section are insufficient to pay administrative costs incurred by issuing agencies under this division, the board may increase the allocation of funds under subdivision (a) of this section up to but not exceeding an amount equal to twenty-five percent (25%) of the total amount of penalties received by a processing agency or court under this division, and may make such other allocations of funds to the California Emergency Housing and Nutrition Fund and the California Housing Fund as may be required to achieve the purposes of this subdivision.

31041. State Funding of Courts. Except as provided in Section 31017 and 31040, nothing in this division is intended to affect, reduce, or otherwise alter the participation of any county in the Court Funding Trust Account or other programs providing state funding of trial courts pursuant to Chapter 13 (commencing with Section 77000) of Title 8 of the Government Code.

SECTION 9. To the extent that this Act is inconsistent with any other governmental statute or special act or parts thereof, this Act is controlling and shall be liberally construed to effect its purpose.

SECTION 10. If any provision of this Act, or the application of any provision of this Act to any person or circumstance, shall be held invalid, the remainder of this Act, to the extent that it can be given effect, shall not be affected thereby, and to this end the provisions of this Act are severable.

following: any laboratory test which indicates exposure to or infection by the AIDS virus, AIDS-related condition, or other communicable diseases; any statement by the inmate or minor to medical personnel that he or she has AIDS or an AIDS-related condition, has been exposed to the AIDS virus, or has any communicable disease; the results of any medical examination or test which indicates that the inmate or minor has tested positive for antibodies to the AIDS virus, has been exposed to the AIDS virus, has an AIDS-related condition, or is infected with AIDS or any communicable disease; provided, that information subject to disclosure shall not include information communicated to or obtained by a scientific research study pursuant to prior written approval expressly waiving disclosure under this section by the officer in charge of the facility.

(c) The officer in charge of the facility shall notify all employees, medical personnel, contract personnel, and volunteers providing services at such facility who have or may have direct contact with the inmate or minor in question, or with bodily fluids from such inmate or minor, of the substance of the information received under subsections (a) and (b) so that such persons can take appropriate action to provide for the care of such inmate or minor, the safety of other inmates or minors, and their own safety.

(d) The officer in charge and all persons to whom information is disclosed pursuant to this section shall maintain the confidentiality of personal identifying data regarding such information, except for disclosure authorized hereunder or as may be necessary to obtain medical or psychological care or advice.

(e) Any person who wilfully discloses personal identifying data regarding information obtained under this section to any person who is not a peace officer or an employee of a federal, state, or local public health agency, except as authorized hereunder, by court order, with the written consent of the patient or as otherwise authorized by law, is guilty of a misdemeanor.

SECTION 2. Effective Date; Retrospective Application.

This initiative and its statutory amendments shall take effect the day after the election and shall be construed to apply retrospectively to pending complaints and petitions, regardless of when the underlying actions took place, and to information subject to disclosure hereunder obtained prior to its effective date, to the maximum extent permitted by law.

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XIIIB, up to a maximum of four percent (4%) of the total amount required pursuant to Section 8(b) of this Article, to that portion of the State School Fund restricted for elementary and high school purposes, and to that portion of the State School Fund restricted for community college purposes, respectively, in proportion to the enrollment in school districts and community college districts respectively.

(1) With respect to funds allocated to that portion of the State School Fund restricted for elementary and high school purposes, no transfer or allocation of funds to this section shall be required at any time that the Director of Education and the Superintendent of Public Instruction mutually determine that current annual expenditures per student equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for elementary and high schools, and that average class size equals or is less than the average class size of the ten states with the lowest class size for elementary and high schools.

(2) With respect to funds allocated to that portion of the State School Fund

restricted for community college purposes, no transfer or allocation of funds pursuant to this section shall be required at any time that the Director of Finance and the Chancellor of Community Colleges mutually determine that current annual expenditures per student for community colleges in this state equal or exceed the average annual expenditure per student of the ten states with the highest annual expenditures per student for community colleges.

(b) Notwithstanding the provisions of Article XIIIB, funds allocated pursuant to this section shall not constitute appropriations subject to limitation, but appropriation limits established in Article XIIIB shall be annually increased for any such allocations made in the prior year.

(c) From any funds transferred to the State School Fund pursuant to paragraph (a) of this Section, the Controller shall each year allocate to each school district and community college district an equal amount per enrollment in school districts from the amount in that portion of the State School Fund restricted for elementary and high school purposes and an equal amount per enrollment in community college districts from that portion of the State School Fund restricted for community college purposes.

(d) All revenues allocated pursuant to subdivision (a) of this section, together